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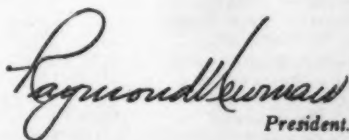
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, and statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

Several states having retail sales taxes also levy a "use" or "compensating" tax upon property brought within their borders upon which their retail sales taxes have not been paid. One purpose of such "use" or "compensating" taxes is to discourage out-of-the-state purchases of property. States having this type of tax in effect are California, Colorado, Ohio and Washington.

On February 1, the Supreme Court of the United States restored to its docket a case involving the constitutionality of State of Washington "Compensating Tax," *Henneford et al. v. Silas Mason Co., Inc., et al.*, assigning it for reargument on March 1. Arguments had previously been had in this case on December 14 and 15, 1936. While the tax was held unconstitutional in the Federal Court from which the appeal was taken, (15 F. Supp. 958), as contrary to the commerce clause of the Federal Constitution, the Supreme Court of Washington has held the tax constitutional and it continues to be enforced.

On February 19, the Supreme Court of Delaware denied the petition for reargument in the case of *Keller et al. v. Wilson & Co., Inc.*


President.

Got to Go to Washington, Have You?

Washington! Scarcely a business, these days, that Washington does not play a part in—many are even required, for some part of their activities, to designate an agent in Washington to receive official communications, accept official orders, take service of process, etc. So lawyers for business corporations need—and therefore The Corporation Trust Company furnishes—facilities in Washington for handling their clients' business. The Corporation Trust Company's Washington office is staffed by men long-experienced in Washington's departmental ways and official personnel; it is located in the very heart of Washington's activities. Many lawyers use it virtually as a Washington branch—when in the city get their mail there, dictate their letters there, use the experience of its staff in dealing with official departments. Get acquainted with it. Some of its services to attorneys:

- furnishing assistance to attorneys in filing registration statements with, and the person to receive communications from, the Securities and Exchange Commission for registrants, and furnishing the contact between the registrant's attorney and the Commission;

- furnishing the agent in the District of Columbia for railroads as required by the Interstate Commerce Act, and receiving and forwarding to counsel all orders served by the Commission;

- furnishing the agent in the District of Columbia required by the Federal Motor Carriers Act to be designated by motor

carriers operating in or through the District of Columbia;

- furnishing the agent in Washington required to be named under the Federal Communications Act by any telegraph or telephone company, or any radio telegraph, radio telephone or broadcasting company;

- furnishing the agent in the District of Columbia for corporations or

ganized under the China Trade Act;

- securing and forwarding any document published by a government department, bureau or commission which is available for public distribution;

- securing authentication of documents by the Secretary of State of the United States and by foreign embassies and legations;

- purchasing documents which are available at the Government Printing Office;

- obtaining information, from official and public sources and in so far as available, in regard to the laws or business conditions of any foreign country, or in regard to the procedure in organizing or qualifying a corporation under the laws of any foreign country;

- obtaining copies of Congressional bills, laws, reports, hearings, etc.

- making appointments with various government departments, bureaus and commissions.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

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THE CORPORATION TRUST COMPANY

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"Doing Business" in Canada

EDWARD ROESKEN

In the various State and Federal Courts of the United States, there are innumerable decisions indicating whether a given degree of activity within a State amounts to the doing of business so as to render a foreign corporation subject to qualification, taxation or the service of process, as the case may be. In most of the Provinces of Canada, however, there is available for guidance only a brief statutory definition as to the meaning of the words "carrying on business," and there are few accompanying decisions interpreting this or some similar phrase.

It may be interesting to note, parenthetically, that in Canada, the Dominion (or federal) Government has exclusive legislative power in all matters *except those specifically delegated to the provincial legislatures* by the British North America Act of 1867,¹ which is the fundamental law of the Canadian Constitution, and which defines the respective powers of the Dominion and Provincial Governments. The Canadian Constitution is in this respect the converse of that of the United States, for "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, *are reserved to the States respectively, or to the people.*"² It happens, however, that in both Constitutions the authority to regulate trade and commerce among the several states or provinces, as the

case may be, is lodged in the respective federal governments.³

The contrast between the general lack of decisions in Canada under the Provincial statutory provisions defining "carrying on business," and the numerous opinions available in many of the states of the Union defining certain activities as doing business and others as not the doing of business, may be attributed in part to the interpretation of the "commerce clause" of the Constitution of the United States, upon which so many of the decisions in the United States turn—particularly to the immunity from State taxation and service of process developed in cases where the activities of corporations in a given State have been found to be limited to the furtherance of "inter-state commerce." The endeavor of corporations to obtain the benefit of such immunity has led to the many American court rulings on "what constitutes doing business." Because of the absence, in the Canadian Provinces, of a similar development and the corresponding lack of rulings indicating circumstances under which such an immunity may be had, it may be said that, in Canada, the terms "doing business" and "carrying on business" have not acquired the restricted meaning which they have under the laws of the various States.

¹ Art. VI, Secs. 91, 92.

² Amendments, Art. X.

³ British North America Act, 1867, Art. VI, Sec. 91; U. S. Constitution, Art. I, Sec. 8.

Domestic Corporations

Canada.

Directors, to whom corporation had loaned money, held liable for corporation's unpaid sales tax. Under sec. 112, R.S.C. 1927, c. 27, Dominion Companies Act, creating a joint and several liability of directors or other officers making prohibited loans to shareholders, the Exchequer Court of Canada holds defendant directors liable to the Crown for unpaid sales taxes, by reason of loans made by the corporation, of which defendants were directors, to themselves while they were shareholders and officers of the company. *The King v. Kussner*, (1936) 4 D. L. R. 752. O. P. Dorais, K. C., and J. Panneton, for plaintiff. B. Bernstein, K. C., and S. Moscovitch, for defendants.

Delaware.

Michigan court holds director of Delaware corporation not liable in connection with a declaration of dividends under Delaware law. In a suit against defendant director, brought in a Michigan court by the trustees in bankruptcy of his corporation, based upon alleged unlawful and negligent declaration of dividends, the Michigan Supreme Court reaches the conclusion that the defendant was not liable, upon a showing that, so far as he had participated in the declaration of the dividends, he was within the immunity afforded directors by Section 34 of the Delaware General Corporation Law with respect to reliance in good faith "upon the books of account of the corporation or statements prepared by any of its officials as to the value and amount of the assets, liabilities and/or net profits of the corporation," in connection with his vote on the dividends in question. *Stratton et al., Trustees in Bankruptcy of Clarence Saunders Stores, Inc. v. Anderson*, Michigan Supreme Court, December 28, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 169168; 270 N. W. 764.

Louisiana.

Subscriber to corporate stock becomes owner of shares upon payment; furnishing of funds by another does not affect subscriber's title to the stock. Plaintiffs, the heirs of Joseph L. Austin, one of the incorporators of defendant company, seek to compel the issuance of a certificate for one share of stock subscribed for by Austin, the corporation having previously issued the certificate to one of the individual defendants. "It is conceded," the Court of Appeals of Louisiana, Orleans, remarked, "that Austin actually subscribed to one share of the capital stock of the company and that it was paid for. Defendant claims that because another stockholder paid the company for Austin's subscription, Austin did not become the owner of the stock. But as between Austin and the company, this fact is immaterial. The company's real interest was in being paid for the subscription and it is not concerned with the source of payment.

The defendant company, having admitted that Austin subscribed to a share of stock and that it actually received in cash the payment required for said share, mandamus will lie to compel said corporation to issue to the subscriber's legal heirs the stock certificate." Defendant contended that because Austin did not receive any of the profits of the corporation and never made any claim for the issuance of the share of stock, his heirs were now estopped from asserting that he was the actual owner of the share. "This point," said the court, "is without merit. The fact that a shareholder in a corporation does not demand dividends or is inactive in the management and control of the corporation cannot be successfully urged by the corporation as an estoppel against his claim that he is the real owner of the share of stock." *McWilliams et al. v. Geddes & Moss Undertaking & Embalming Co., Limited, et al.*, 169 So. 894. H. W. & H. M. Robinson of New Orleans, for appellant Geddes & Moss Undertaking & Embalming Co., Limited. Wisdom & Stone and John Minor Wisdom of New Orleans, for appellees.

Montana.

Attempted transfer of property rights by a corporation to an unformed Montana corporation held ineffectual. Plaintiff stockholder in defendant corporation objects to the carrying out of a resolution, adopted at a special meeting of defendant's stockholders, which authorized the transfer of a substantial part of the corporation's mining rights to a Montana corporation which had not yet been organized at the time the resolution was adopted. The notice calling the meeting had alleged that the unformed corporation had submitted a proposition whereby that corporation agreed to do a number of things in consideration of the transfer of the rights in question to it. The United States District Court, District of Montana, finds that the notice was phrased in terms too indefinite to comply with Section 6004, Rev. Codes Montana, 1921, providing that such a notice shall contain "a complete and specific statement of the proposal to be considered and acted upon at the meeting," and holds it insufficient to set the power of the stockholders of defendant corporation in motion. *Schwartz v. Inspiration Gold Mining Company*, 15 F. Supp. 1030. Joseph Binnard, Alex C. Rodger, H. L. Maury and A. G. Shone of Butte, Montana, for plaintiff. Alf C. Kremer and H. D. Carmichael of Butte, Montana, for defendant.

New York.

Where receiver refuses to institute action to redress injury to corporation, stockholder is without right to initiate derivative action but may apply to have receiver removed and another appointed. A stockholder sued in a derivative action to recover damages alleged to have been suffered by the wrongful acts of the defendants, who were not directors or officers of the corporation. A receiver had been appointed for the corporation in a sequestration action and a

demand had been made on the receiver to prosecute this action, which was refused. The stockholder alleged the receiver was a clerk in the office of defendants' attorney. "Under these circumstances," said the New York Supreme Court, Appellate Division, Second Department, after indicating that the stockholder was without capacity to sue on behalf of the corporation, "plaintiff should apply at Special Term to have the receiver removed and another appointed so as to redress the wrongs alleged to have been committed against the corporation." *Koral v. Savory, Inc., et al.*, 291 N. Y. S. 123. Abraham Marcus of New York City, for plaintiff. H. Preston Coursen of New York City, for Savory, Inc. and others.

Oklahoma.

Corporate entity may be disregarded where one company is merely an adjunct or instrumentality of another by which the former is dominated and controlled. This was a civil suit in the nature of an action in equity in which plaintiff sought to have two corporate defendants declared to constitute a single entity for the purpose of collecting an unsatisfied judgment previously rendered against one of them. This judgment debtor defendant had taken over the business previously operated by the older corporation of the two defendants. The court found that the stockholders of the new corporation, the judgment debtor, were all employees of the old, the money to purchase the stock of the new corporation was furnished by the president and principal stockholder of the old corporation who accepted demand notes therefor which notes were never paid and on which payment was never demanded. All of the property used in operating the business continued to be owned by the old company and used by the new company under a lease agreement which could be canceled at any time without cause, the paid in capital stock of the new company was merely nominal, and the managing personnel and place of business of the two corporations remained the same. Under these circumstances, the Oklahoma Supreme Court said: "We conceive it our duty in this case to look beyond the form and to the substance of the transactions here involved. The fiction of separate legal entity in this case must be disregarded and the two corporations held to constitute but a single entity." Plaintiff was accordingly allowed to recover. *Wallace v. Tulsa Yellow Cab Taxi & Baggage Co. et al.*, 61 P. (2d) 645. J. D. Lydick, John A. Brett, Earl Sadler and E. B. Glasgow of Oklahoma City, for plaintiff in error. Massingale, Duff & Manatt of Tulsa, for defendant in error Tulsa Yellow Cab Taxi & Baggage Co.

Texas.

Rights assigned under an oil and gas lease held "property" for purpose of issuance of corporate stock. Under the Texas Constitution, section 6, article 12, containing a provision that a corporation shall not issue stock "except for money paid, labor done or property

actually received," the Supreme Court of Texas holds valid the issuance of stock for a consideration consisting of the assignment to a corporation of rights under an oil and gas lease on Texas property. *McAlister v. Eclipse Oil Co.*, 98 S. W. (2d) 171. M. L. Lefler and E. B. Votaw of Beaumont, for plaintiff in error. W. D. Gordon and E. E. Easterling of Beaumont, for defendant in error.

Utah.

Statutes permitting corporations generally to amend their charters extending their corporate existence do not contravene constitutional prohibition on legislature to extend the franchise or charter of a corporation. Two Utah corporations were incorporated at a time when they were limited by statute to a corporate existence of twenty-five years. Later the statutes were amended to permit an existence of greater length to corporations generally and the charters of the corporations were amended to take advantage of the new provisions. Plaintiffs, directors of one of the corporations, contended the statutes enlarging the period of corporate existence were unconstitutional because contrary to a provision of the state constitution that "the Legislature shall not extend any franchise or charter" of any corporation. The Supreme Court of Utah, in holding the acts did not offend the constitutional provision, pointed out that the extension of existence was effected by action of the stockholders and not by action of the Legislature, saying that the constitutional provision "prohibits the legislature from passing any law which, without the intervention of stockholders, extends the life of a corporation beyond a period fixed in the articles of incorporation." *Keetch et al. v. Cordner et al.*, 62 P. (2d) 273. A. V. Watkins of Provo, for plaintiffs. Robinson & Robinson of Provo, for defendants. M. E. Wilson of Salt Lake City and Reeder & Wallace and De Vine, Howell & Stine, of Ogden, amici curiae.

Virginia.

Order of chancellor for declaration of dividend, acquiesced in by all but four of fifteen directors, affirmed. Certain stockholders brought this suit against their corporation and its directors, for the benefit of themselves and all other 7 per cent cumulative dividend prior preference stockholders of the company, seeking to have the chancellor order the directors to declare a dividend. There were fifteen directors. The chancellor had reached the conclusion that the plaintiffs were entitled to the relief sought and four directors who were defendants have appealed. "A reversal here," observed the Supreme Court of Appeals of Virginia, "would in effect amount to this: It would amount to saying that a dividend should not be declared, although the corporation itself and all of its directors except four are willing to pay it. It would be to vest control in four dissenting directors. By the same token control might be vested in one dissenter." The ruling of the chancellor with respect

to the dividend was therefore affirmed. *Starring et al. v. Kemp et al.*, 188 S. E. 174. Hunton, Williams, Anderson, Gay & Moore, Wirt P. Marks, Jr., and Stephen H. Simes, of Richmond, for appellants. Hundson Cary of Richmond, for appellees. Parrish, Butcher & Parrish of Richmond, for Hundson Cary.

Foreign Corporations

Alabama.

Service of process held valid although carrying on of business by foreign corporation had been discontinued. The Supreme Court of Alabama holds that a foreign corporation, licensed to do business in the state, but which has discontinued doing business there, may be served with process in a suit on a cause of action arising when it had been doing business. "We find in none of our cases," said the court, "a holding that a foreign corporation cannot be sued in Alabama on a claim which arose here, when effectually served here on its designated agent, though it is not engaged in business here when sued. And it is not so held in most other states." Concerning the effect of the appointment of a receiver in such a connection, the court continued: "Whatever may be the effect of the receivership otherwise, it does not ipso facto destroy the authority of the designated agent to receive service of process on causes which arose in Alabama before the receiver was appointed. The appointment of a receiver is no bar to a suit against the wrongdoer if service is duly perfected." *Parker v. Central of Georgia Railway Company*, 170 So. 333. George Ross of Bessemer, and Hill, Hill, Whiting & Rives of Montgomery, for appellant. Steiner, Crum & Weil and Sam Rice Baker of Montgomery, for appellee.

Idaho.

Is a mortgage a conveyance of real estate? Section 29-505, Idaho Code, rendered void "any pretended deed or conveyance of real estate" to an unregistered foreign corporation. Respondent unregistered foreign corporation had taken an assignment of a mortgage on Idaho real estate executed by defendants. Upon appeal in foreclosure proceedings, the Supreme Court of Idaho had held respondent was, by investment in mortgages on Idaho property, doing business there and that the mortgage was void under the section above mentioned. (The Corporation Journal, November, 1936, page 254.) On rehearing, the court affirms its views previously expressed, and emphasizes that a mortgage was intended by the legislature as being embraced within the meaning of the word "conveyance" appearing in Section 29-505. *John Hancock Mutual Life Insurance Company, respondent, v. Z. L. Girard et al., defendants, Bertha C. Bressler, appellant*, Supreme Court of Idaho, January 15, 1937; 64 P. (2d) 254. A. H. Oversmith of Moscow, Idaho, for appellant. Dean Driscoll of Boise, for respondent on rehearing. CCH Court Decisions Reporting Service Requisition No. 163429A.

Iowa.

Occasional orders, accepted at home office of foreign corporation in another state, held not doing business so as to subject it to service of process. Defendant foreign corporation appeared specially and moved to quash the service made upon the individual defendant, its alleged agent. The corporation was not licensed to transact business in Iowa, and had no office or property within that state. The individual defendant had occasionally secured an order for the corporation's product, sending it to the corporation in Minnesota for acceptance or rejection. If accepted, the material was later sent to the individual in Iowa, who delivered it to the purchaser, on whom the corporation drew a sight draft. From the proceeds of this, the individual defendant was paid by check of the corporation. The Supreme Court of Iowa holds the motion to quash the service should be sustained, as the foreign corporation had done nothing to subject itself to the local jurisdiction, and that such occasional solicitation of orders was not doing business in Iowa. *Dorsey v. Anderson et al.*, Supreme Court of Iowa, December 15, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 168773.

Maine.

Service of process upon an agent of defendant corporation's agent, held invalid. Defendant corporation's operations consisted of the licensing to theatres of an advertising plan or scheme to stimulate attendance known as "Bank Night." It had no office or direct representative in Maine. It did, however, have a New England distributor for the plan who had an office in Massachusetts. Service of process had been made upon an agent in Maine of this New England distributor, which the corporation sought to have set aside. Contracts or licensing agreements were signed by the Maine theatre owners in that state and later accepted and executed by the defendant corporation at its office in Denver, Colorado. In holding the service was not sufficient, the United States District Court, District of Maine, in which the action had been instituted, remarked: "The evidence shows that the scheme of which the corporation claims proprietorship was sold in Maine and that the corporation received benefits from it and that considerable business of that kind was being done, but it fails to show any transaction in Maine initiated and carried through by the corporation itself or by any person authorized to act as its agent. The contractor or distributor, Heffner, was the person doing business directly and by his agent and this is not sufficient to authorize the conclusion that the corporation itself was found or was present in the State." *Berman v. Affiliated Enterprises, Inc. et al.*,* United States District Court, District of Maine, December 23, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 169013.

*The full text of this opinion is printed in *The Corporation Tax Service*, Maine volume, page 151.

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Corporate Representative thought to let the company about a Routine State of the corporation had had Representation in the state That Time.

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The state's Investigator
The state's law had been
penalty was stiff- The
for every Businessman
into in the state with
no Corporate Representative

Totted Up, it came to

A Moral

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representative; nobody had the company's lawyer know the State of Personnel. So the company had any Corporate Representation in the state during All

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Investigator was Shocked.
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What that corporation's officers should have known in the First Place, of course, was that Corporate Representation by a company employe is Very, Very may happen. Employes are Dangerous. So *many* things promoted, as in the case of the Soap Manufacturer, or they die, or simply move away, or get discharged . . . the company is without the Corporate Representative required in the state . . . but nobody realizes it . . . then along comes Trouble.

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New Jersey.

Foreign corporation engaged in conducting correspondence courses, may maintain suits in state on contracts made outside the state. Plaintiff unlicensed foreign corporation, maintaining an office in Newark, New Jersey, solicited students in correspondence courses in illustration and cartooning to be sent from its home office in Minnesota, where the contract for the course sued upon was accepted. The Supreme Court of New Jersey, in holding that the suit could be maintained said: "Beyond the fact that the plaintiff maintains a studio in this state where students may also receive some instruction and where an instructor is employed, the case is precise with and controlled by *International Text-Book Co. v. Pigg*, 217 U. S. 91, 106, 30 S. Ct. 481, 484," where it was held that activities such as those in question did not require a corporation so engaged to qualify as a condition to the carrying on of interstate commerce within a state. Continuing, the New Jersey court observed: "That an office was maintained in this state and that there was a resident instructor, who in part participated in the instruction, which was particularly carried on by mail between the head office of the company in the state of Minnesota and the resident scholar, does not destroy the interstate character of the transaction, and it seems error to have precluded the plaintiff from the right to recover under its contract for the agreed price for the services rendered." *Federal Schools, Inc. v. Sidden*,* 188 A. 446. Irving U. Young and William Simon of Newark, for appellant. Peter C. Triolo of Summit, for respondent.

*The full text of this opinion is printed in *The Corporation Tax Service*, New Jersey volume, page 508.

New York.

Temporary maintenance of booth at exhibition held not doing business so as to render corporation subject to service of process. A vice-president of defendant corporation was served with summons while he was in charge of a booth maintained by the corporation at a poultry industries exposition, where, it was indicated, he may have taken a few orders. The New York Supreme Court, Special Term, New York County, holds that these activities were not sufficient to constitute doing business within the jurisdiction. "It must appear," said the court, "that the corporation was doing business 'not occasionally or casually, but with a fair measure of permanence and continuity.'" *Rhodes v. Martin*,* Supreme Court, Special Term, New York County, December 8, 1936.

*The full text of this opinion is printed in *The Corporation Tax Service*, New York, page 213.

North Carolina.

Soliciting, taking and delivering of photographs within state held to be doing intrastate business, although developing and finishing

were done elsewhere. In the lower court, the District Court of the United States for the Western District of North Carolina, plaintiffs sought an injunction to restrain the collection of the state license taxes on photographers and a city license tax on transient photographers. A dismissal of the bill in the District Court was affirmed by the United States Circuit Court of Appeals, because an insufficient jurisdictional amount was involved and because the court concluded plaintiff was engaged in intrastate commerce when it solicited orders for photographic portraits through its agents in North Carolina, took the pictures there, the negatives then being mailed to the home studio of plaintiff in Minnesota for development and finishing, and the customer later making a selection from proofs received by plaintiff's agents in North Carolina. The final photographs were subsequently sent by mail direct to the customer in North Carolina from Minnesota. "We do not think," said the court, "that the fact that the negatives of the photographs, after the taking, are sent away to Minnesota to be finished makes the transaction one of interstate commerce. The actual work of the photographer is done in the state and the mechanical finishing of the negative does not change the fact that the photographer is carrying on his business in the City of Charlotte and the State of North Carolina." *Lucas et al. v. The City of Charlotte*,* 86 F. (2d) 394. J. L. De Laney (Bridges & Orr, on the brief), for appellants. Robert A. Wellons and Harry McMullan, Asst. Atty. General (A. A. F. Seawell, Attorney General, and T. W. Bruton, Asst. Atty. General, on the brief), for appellees.

* The full text of this opinion is printed in **The Corporation Tax Service**, North Carolina volume, page 137.

Wisconsin.

Taking assignment in another state of notes secured by chattel mortgage on Wisconsin property, is not transaction of business in Wisconsin. The Supreme Court of Wisconsin rules that where a corporation took an assignment in Illinois of notes secured by a chattel mortgage on property in Wisconsin, this did not constitute the loaning of money in Wisconsin, and that the corporation acquiring rights under such a contract might enforce them in Wisconsin without being licensed as a foreign corporation in that state. *Muldowney et al. v. McCoy Hotel Co.*, 269 N. W. 655. William E. Burke of Milwaukee, for appellant. Ben Z. Glass of Milwaukee, for respondents.



Taxation

California.

Property sold and delivered in California but immediately destined for shipment to and use by purchasers at points outside the state, held subject to the Retail Sales Tax. Plaintiff seeks the recovery of the California retail sales tax paid under protest on sales in connection with which delivery was made to purchasers within the state of California. Plaintiff alleged upon information and belief that the commodities were purchased to be used, and upon delivery were immediately destined for shipment to and used by the purchasers at points out of the state of California. The Superior Court, County of Sacramento, holds these allegations insufficient to show interstate transactions immune from the California sales tax, the interstate transportation being accidental so far as the plaintiff is concerned. *Standard Oil Company of California v. Johnson, State Treasurer*,* California Superior Court, County of Sacramento, December 11, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 168599.

* The full text of this opinion is printed in *The Corporation Tax Service*, California volume, page 571-105.

New York.

Transfer of amount from surplus account to capital account held not to constitute declaration of a dividend for purposes of measuring franchise tax. Section 186 of the Tax Law required corporations such as appellant to pay a franchise tax in part at the rate of "three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed in this state." The Court of Appeals holds that the transfer of a substantial amount from the surplus account to the no par value capital stock account of a company, having outstanding only shares without par value, cannot, as contended by the Tax Commission, be regarded as in effect the declaration and distribution of a stock dividend, saying: "Neither money nor property nor a stock dividend has come into the hands of the stockholders as the result of the transfer. No stockholder has the right unless further corporate action is taken to receive any equivalent of the amount transferred." *People ex rel. Adams Electric Light Co. v. Graves et al.*,* 272 N. Y. 77, 4 N. E. (2d) 941. Francis E. Cullen of Watertown, for appellant. John J. Bennett, Jr., Atty. General, (Wendell P. Brown of Albany, of counsel), for respondents. (Motion for reargument denied, December 31, 1936.)

* The full text of this opinion is printed in *The Corporation Tax Service*, New York, page 6161.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 570. *Southern Natural Gas Corporation et al. v. The State of Alabama*, 170 So. 178. (The Corporation Journal, October, 1936, page 232.) Validity of franchise tax upon qualified foreign corporation engaged in interstate activities, with principal office in Alabama. Appeal filed December 16, 1936. Probable jurisdiction noted January 4, 1937.

LOUISIANA. Docket No. 652. *Great Atlantic & Pacific Tea Company v. Grosjean, Supervisor of Public Accounts et al.*, 16 F. Supp. 499. (The Corporation Journal, November, 1936, page 256.) Constitutionality of Louisiana Chain Store Tax. Appeal filed January 14, 1937. Probable jurisdiction noted February 1, 1937.

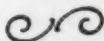
NEW YORK. Docket No. 693. *Vaughan et al. v. The State of New York*, 272 N. Y. 102, 5 N. E. (2d) 53. (The Corporation Journal, January, 1937, page 304.) Constitutionality of New York Stock Transfer Tax law as applied to transfer of par value shares. Appeal filed February 2, 1937.

OHIO. Docket No. 589. *North et al. v. Higbee Company et al.*, 3 N. E. (2d) 391. (The Corporation Journal, December, 1936, page 273.) Default in lease by subsidiary—liability of parent company; judge absent from oral hearing—participation in decision. Appeal filed December 22, 1936. Writ of certiorari to the Supreme Court of Ohio denied, February 1, 1937.

VIRGINIA. Docket No. 40. *The Atlantic Refining Company v. Commonwealth of Virginia*, 183 S. E. 243. (The Corporation Journal, March, 1936, page 136.) Validity of foreign corporation entrance fee. Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936.

WASHINGTON. Docket No. 418. *Henneford et al. v. Silas Mason Co., Inc. et al.*, U. S. District Court, Eastern District of Washington, August 3, 1936; 15 F. Supp. 958. (The Corporation Journal, November, 1936, page 258.) Involves validity of State of Washington "Compensating Tax." Appeal filed September 30, 1936; probable jurisdiction noted October 19, 1936. Motion to advance argument submitted by counsel for appellants, October 26, 1936. Motion granted and case advanced for argument on Monday, December 14, 1936. Argument concluded, December 15, 1936. Restored to the docket February 1, 1937, and assigned for reargument on Monday, March 1.

* Data compiled from CCH U. S. Supreme Court Service, 1936-1937.



Regulations and Rulings

GEORGIA—The Attorney General of Georgia has rendered an opinion, reported in the Georgia CT Service, page 7613, that where milk is transported by truck from farm to market, even though it may be first concentrated at a cold storage plant, no mileage tax is due, provided the title to the milk remains in the producer until delivery to the purchaser at the market.

INDIANA—A non-resident oil broker, delivering gasoline to licensed Indiana dealers and operating exclusively in interstate commerce, is not required to secure a dealer's license but may be required to make reports of deliveries, is the opinion of the Attorney General, reported in full text in the Indiana CT Service, page 587-34.

MARYLAND—A ruling under the admissions tax that tickets which do not entitle the holders to enter a place of amusement but which may be exchanged for admission tickets are not subject to the tax, given by the Attorney General, is reported in full at page 7677 of the Maryland CT Service. It is indicated that tax payment in such a case is necessary only if the purchasers actually enter the place of amusement.

MISSISSIPPI—With reference to the sales tax as applied to manufacturers, the Attorney General has stated that the tax is to be measured by the value of the manufactured product, regardless of its ownership. (Full text of opinion printed in the Mississippi CT Service, page 7559.)

Some Important Matters for March and April

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Service* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding all state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details of the Service from any office of The Corporation Trust Company.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARIZONA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

- ARKANSAS—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- CALIFORNIA—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.
 Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.
- COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.
 Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.
- CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.
- DELAWARE—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1936.
 Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.
- DOMINION OF CANADA—Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.
 Annual Summary due between April 1 and June 1.—Dominion Companies.
- GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- IDAHO—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.
- IOWA—Income Tax Return and Return of Information at the source due on or before March 31.—Domestic and Foreign Corporations.
 Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.
- KANSAS—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.
 Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.
- KENTUCKY—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
 Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.
 Return of Withholding at source due on or before April 15.—Domestic and Foreign Corporations.
- MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.
- MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MINNESOTA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSISSIPPI—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW MEXICO—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Return of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax of Real Estate and Holding Corporations due on or before April 1.—Domestic and Foreign Real Estate and Holding Corporations.

Annual Franchise (Income) Tax Return (Form 3IT—Article 9A, Tax Law) due on or before May 15, together with one-half of tax.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

Quarterly Retail Sales Tax Return and Vendor's Excise Tax due on or before April 15.—Domestic and Foreign Corporations.

- OKLAHOMA**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- OREGON**—Combined Excise (Income) Tax and Intangibles Income Tax Return due on or before March 30.—Domestic and Foreign Corporations.
- PENNSYLVANIA**—Capital Stock Tax and Corporate Loans Reports and Taxes due on or before March 15.—Domestic Corporations.
Franchise Tax and Corporate Loans Reports and Taxes due on or before March 15.—Foreign Corporations.
Bonus Report and Tax due on or before March 15.—Foreign Corporations.
Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.
- RHODE ISLAND**—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.
- SOUTH CAROLINA**—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- SOUTH DAKOTA**—Income Tax Return and Return of Information at the source due on or before March 30.—Domestic and Foreign Corporations.
- TENNESSEE**—Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.
- TEXAS**—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.
Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- UNITED STATES**—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- UTAH**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- VERMONT**—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.
Income (Franchise) Tax Return due on or before April 15.—Domestic and Foreign Corporations.
- VIRGINIA**—Income Tax Return and Return of Information at the source due on or before April 15.—Domestic and Foreign Corporations.
- WEST VIRGINIA**—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
Annual License Tax Report due in April.—Foreign Corporations.
Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.
- WISCONSIN**—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

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